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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

In re JACOB S., a Person Coming Under the
Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

JACOB S.,

Defendant and Appellant.

F077844

(Super. Ct. No. 18CEJ600221-1)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Fresno County. Mary Dolas, Judge.

Stephanie L. Gunther, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Michael P. Farrell, Assistant Attorney General, Louis M. Vasquez, Amanda D. Cary and Cavan M. Cox II, Deputy Attorneys General, for Plaintiff and Respondent.

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* Before Levy, Acting P.J., Smith, J., and Meehan, J.

The court adjudged appellant Jacob S. a ward of the court (Welf. & Inst. Code, § 602) after the court sustained allegations charging him with robbery (Pen. Code, § 211/count 1)¹ and resisting arrest (§ 148, subd. (a)(1)/count 2). On appeal, appellant contends the court's finding that he committed robbery violated his federal constitutional right to due process because the evidence is insufficient to sustain this finding. We affirm.

FACTS

On May 2, 2018, at approximately 5:40 p.m., after leaving work at a restaurant in Fresno, Anju Kanwar walked to a bus stop located across the parking lot. As she waited for a bus and spoke to her husband on her cell phone, Kanwar moved her purse from where it hung on her left shoulder and hung it on her right shoulder. She also held her wallet under her left arm, pressed against the side of her chest.

Two videos that were introduced into evidence at Jacob's jurisdictional hearing show that as Kanwar continued to sit on the bench, appellant and another boy stood a few feet behind her as a third boy stood several yards away, facing towards them and Kanwar. Appellant then stealthily approached closer to Kanwar and, as she started getting up, he reached out and grabbed Kanwar's wallet from under her arm. The three boys then ran off and Kanwar chased them, yelling for help.²

Police Officer Christopher Hinojos and his partner were on patrol when they received a call regarding a robbery. After spotting appellant and two other boys who matched the description of the suspects, he stopped the car, got out, and tried to contact them. Appellant and the other boys ran away despite Hinojos yelling for them to stop. Appellant was eventually located hiding in a grove of trees and taken into custody.

After hearing argument, the court sustained the two counts of the petition.

¹ All further statutory references are to the Penal Code, unless otherwise indicated.

² The wallet contained miscellaneous items, including \$40 in cash.

On July 18, 2018, the court placed appellant on probation until July 18, 2019, and committed him to the GPS program for a period not to exceed 30 days.

DISCUSSION

Appellant contends the evidence showed that the victim did not resist his attempt to take the wallet from her and that the force he used to seize the wallet did not exceed the force necessary to accomplish the seizure. Therefore, according to appellant, the evidence was insufficient to sustain the court's finding that he committed robbery. Appellant further contends that because there was insufficient evidence to support the court's finding that he committed robbery, this finding violates his Fifth and 14th Amendment right to due process. We reject these contentions.

“ ‘In reviewing [a claim regarding] the sufficiency of the evidence, we must determine “whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” [Citation.] “[T]he court must review the whole record in the light most favorable to the judgment below to determine whether it discloses substantial evidence—that is, evidence which is reasonable, credible, and of solid value—such that a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt.’ [Citation.] We “ ‘presume in support of the judgment the existence of every fact the trier could reasonably deduce from the evidence.’ ” ’ [Citation.] If we determine that a rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt, the due process clause of the United States Constitution is satisfied [citation], as is the due process clause of article I, section 15, of the California Constitution.” (*People v. Osband* (1996) 13 Cal.4th 622, 690.)

The crime of robbery is defined in section 211 as “ ‘the felonious taking of personal property in the possession of another, from his person or immediate presence, and against his will, accomplished by means of force or fear.’ ” (*People v. Mungia*

(1991) 234 Cal.App.3d 1703, 1707.) Absent force or fear, the crime is grand theft, not robbery. Whether there is force or fear is a factual question for the trier of fact. (*Ibid.*)

“ ‘[S]omething more is required than just that quantum of force which is necessary to accomplish the mere seizing of the property.’ ” (*People v. Burns* (2009) 172 Cal.App.4th 1251, 1259.) However, if the victim resists, “any force sufficient to overcome a victim’s resistance will necessarily be more force than required to seize the property.” (*People v. Hudson* (2017) 11 Cal.App.5th 831, 839.)

Here, since the wallet was lodged between Kanwar’s arm and her chest prior to appellant snatching it, Kanwar had to exert sufficient force to hold it there and prevent it from falling. This required appellant to use more force to take the wallet than he would have had to use if the wallet had been laying on the bench next to Kanwar, for example. Thus, the record supports a finding that appellant used more than the amount of force necessary to accomplish the mere seizing of Kanwar’s wallet.³ (Cf. *People v. Lescallett* (1981) 123 Cal.App.3d 487, 491-492 (*Lescallett*) [jury could reasonably conclude that nonconsensual removal of victim’s purse was accomplished by “ ‘force or fear’ ” *or both* where evidence showed that defendant ran up to victim and snatched purse from her hand and victim testified she was frightened], italics added.)

Appellant questions the *Lescallett* court’s conclusion that the jury could have found that the robbery in that case was accomplished by force by the mere snatching of the purse from the victim’s hand. In doing so, he attempts to distinguish the cases the court cited in support of this conclusion. However, regardless of whether the cases cited by *Lescallett* support this conclusion, appellant exerted more force here in seizing Kanwar’s wallet than the defendant in *Lescallett* exerted in snatching his victim’s purse. Further,

³ In light of this conclusion, we need not determine whether the record supports a finding that Kanwar resisted the seizure of the wallet and that appellant used sufficient force to overcome Kanwar’s resistance.

although appellant cites several cases in which a robbery conviction was upheld where the perpetrators used more force than appellant to seize their victims' property, none hold that a similar amount of force as appellant used here was insufficient to sustain an adjudication or conviction for robbery. Thus, we conclude that the evidence is sufficient to sustain the court's true finding on the robbery charge and that the court's finding did not deny appellant his right to due process.

DISPOSITION

The judgment is affirmed.